

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
William L. Needham and Lucille Needham)	File No. EB-02-KC-198
Owners of Antenna Structure No. 1064409)	NAL/Acct. No. 200232560008
Osage Beach, Missouri)	FRN: 0007-1278-06

FORFEITURE ORDER

Adopted: March 24, 2003

Released: March 26, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of \$10,000 to William L. Needham and Lucille Needham (“the Needhams”) for willfully violating Section 17.50 of the Commission’s Rules (“Rules”).¹ The Needhams are the owners of the captioned antenna structure. The noted violation involves the Needhams’ failure to clean or repaint the captioned antenna structure as often as necessary to maintain good visibility.

2. On June 27, 2002, the Commission’s Kansas City, Missouri, Field Office (“Kansas City Office”) issued a \$10,000 *Notice of Apparent Liability for Forfeiture* (“*NAL*”) to Lake Mobile Phone for the noted violation.² On July 10, 2002, William L. Needham (“Needham”) filed a response to the *NAL*.³

II. BACKGROUND

3. On April 23, 2002, an agent from the Kansas City Office inspected an antenna structure located at 1090 Bluff Drive, Osage Beach, Missouri (Antenna Structure Registration number 1064409). The agent observed that the antenna structure’s bands of paint were not clearly visible because of fading paint, the chipping of the structure’s white paint and black cables running up the legs of the structure. As a result of this investigation, the Kansas City Office issued the above-referenced *NAL* on June 27, 2002.

4. In his response to the *NAL*, Needham asserts that he is very serious about tower maintenance and has maintained a painting schedule for the Osage Beach tower since it was

¹ 47 C.F.R. § 17.50.

² *Lake Mobile Phone.*, NAL/Acct. No. 200232560008 (Enf. Bur., Kansas City Office, rel. June 27, 2002).

³ The *NAL* was issued to Lake Mobile Phone, which was then the registered owner of the captioned antenna structure. Needham, however, filed a response in which he asserts that Lake Mobile Phone became bankrupt in 1994 and was dissolved and that he and his wife, Lucille Needham, are now the owners of the captioned tower. Accordingly, we accept Needham’s response to the *NAL* and re-caption this proceeding.

constructed in 1975. He also asserts that, prior to the inspection, he had decided to accelerate the painting schedule because the placement by other users of black cables which partially obscured the painted bands. Needham further asserts that: he had no difficulty seeing the tower or discerning its painted bands at a distance of one half mile from the tower; in his opinion, the tower was not in dangerous or hazardous condition; and the agent's report was "subjective." However, Needham agrees that the tower's painting was "nearing the end of its normal life and would need replacement soon." Finally, Needham asserts that, after being informed that the tower was noncompliant, he had it repainted between May 17 and 25, 2002.

III. DISCUSSION

5. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),⁴ Section 1.80 of the Rules,⁵ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Policy Statement*"). In examining Needham's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶

6. Section 17.50 of the Rules provides that antenna structures requiring painting shall be cleaned or repainted as often as necessary to maintain good visibility. Nothing in Needham's response to the *NAL* warrants overturning the agent's determination that the tower's painted bands were not clearly visible because of the poor condition of the paint. We, therefore, find that the Needhams violated Section 17.50 of the Rules. Needham asserts that he did not believe the condition of the tower's paint required repainting. He was, therefore, aware of the condition of the paint but chose not to repaint the tower. We find that the Needhams' violation of Section 17.50 was willful.⁷

7. We have examined Needham's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that the Needhams willfully violated Section 17.50 of the Rules, and we find no basis to rescind or reduce the \$10,000 forfeiture proposed for this violation.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311, and 1.80(f)(4) of the Rules,⁸ William L. Needham and Lucille Needham

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. § 1.80.

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ Section 312(f)(1) of the Act, 47 USC § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991); see also *Nan Tan Computer Co.*, 9 FCC Rcd 3092 (1994).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

ARE LIABLE FOR A MONETARY FORFEITURE in the amount of \$10,000 for willfully violating Section 17.50 of the Rules.

9. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁹ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (“FRN”) referenced above, and should also note the NAL/Acct. No. referenced above. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

10. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class and certified mail, return receipt requested, to William L. Needham and Lucille Needham, 1090 Bluff Drive, Osage Beach, Missouri 65065.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁹ 47 U.S.C. § 504(a).

¹⁰ See 47 C.F.R. § 1.1914.